IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

MFA.No. 76 of 2007()

AP.64/1998 of APPELETTE TRIBUNAL FOR FOREIGN EXCHANGE, NEW DELHI
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APPELLANT: APPELLANT:

E.FAIZAL, ERANHIKAL HOUSE,
P.O.KATTIPPARA, THAMARASSERY,
CALICUT DISTRICT.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS: RESPONDENTS:
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1. THE APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE, 4TH FLOOR, B-WING, JANPATH BHAVAN, JANPATH, NEW DELHI.

2. ASSISTANT DIRECTOR, ENFORCEMENT DIRECTORATE, CALICUT.

BY SRI.PARAMESWARAN NAIR, CGC

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.76 OF 2007 ()

Dated this the 12th day of June, 2007

J U D G M E N T

KOSHY,J.

Appellant herein was proceeded against under the provisions of the Foreign Exchange Regulation Act on the ground that he has contravened the provisions of Section 9(1)(b) of the Foreign Exchange Regulation Act, 1973. On 29.3.1995 while the appellant was travelling in a K.S.R.T.C. bus from Sulthan Bathery to Kalpetta the police seized an amount of Rs.5,90,000/- from the appellant and from the possession of the appellant's friend Sri.Zakeer. Appellant made a statement before the Officers. In his statement he stated that he was working in a grocery shop at Rajaji Nagar, Bangalore, for about 2 years and at the time of the incident he was not employed. He added that when he was working in Bangalore one Kunnummel Veettil Yousuf also worked with him and they became intimate friends and that the said Kunnummel Veettil

Yousuf went to Abu Dhabi about 2 years back and was presently living at P.B.No.4036, Abu Dhabi. Appellant further stated that the said Yousuf used to talk him over phone and on 26.3.1995 Sri.Yousuf contacted him over telephone No.524 and requested for some help. Yousuf told him that he had arranged and sent Rs.5,90,000/- and the same would be delivered to him by a local person. He instructed Faizal to go to Bangalore and contact one person by name Aboobacker and collect Rs.5,90,000/- and distribute the same to 5 persons. Sri.Yousuf also gave him the telephone number of Sri.Aboobacker of Bangalore and instructed him to destroy the telephone number after receipt of the amount. He also stated that Yousuf asked him to distribute the amount as follows:

Rs.2,00,000/- to Muhammed Haji

Rs.1,50,000/- to Yousuf Haji

Rs.1,00,000/- to Salim Haji

Rs.1,00,000/- to Kasim Haji

Rs.40,000/- to Kolam

According to him, Sri.Yousuf further told him that he would

give the full address after he receives and informs him about the receipt of the money. Sri.Faizal agreed to the request of Sri.Yusuf and accordingly he and his friend Zakkeer proceeded to Bangalore on 28.3.1995 at 6 p.m. and after reaching Bangalore he contacted Aboobacker over phone. The said Aboobacker asked his name, address, age and colour of his shirt and asked him that he would come there at 9 p.m. Accordingly Faizal went to the said place along with Zakeer and waited there. Sri.Aboobacker came there by 9.15 p.m. and after proper identification paid him Rs.5,90,000/-. Aboobacker also told him that it had been arranged by Yousuf of Abu Dhabi. After receiving the amount, they were returning to Koduvally by KSRTC bus. However, the Kalpetta police stopped the bus in front of the police station at 11.45 p.m. and searched the passengers. They seized this amount and document from Sri.Faizal. Sri.Faizal also stated that he destroyed the telephone number of Sri.Aboobacker after receipt of the amount as instructed by Yousuf. Regarding the document seized from him Sri.Faizal stated that one side of the cigarette packet contains the details of the names of the persons to

whom the aforesaid amount of Rs.5,90,000/- has to be distributed. The other side contains details of cost of medicines, bus charges, etc., incurred during his grand-father's hospitalisation. It also contains money spent by him for eatables. The 5 bus tickets seized from him were for the journey to Bangalore and back. The Kora and plastic bags seized from him were used for carrying the money. The Kannada newspapers seized from him were the papers in which currency notes were bundled. Sri.M.K.Zakeer who accompanied the appellant gave a similar statement corroborating the statement of the appellant. It is true that when he was released on bail he made a telegram retracting the statement. But before the Magistrate when he was produced he did not contend that he was compelled to give a statement before the Officers. However, according to him the amount was given to him by one Sulaiman. But neither the appellant nor Sulaiman claimed the money or explain the source of the money. Even the statement given by his colleague Sri.Zakeer was not retracted. He has not explained to the satisfaction how he is able to carry so much amount in

cash legally. In the above circumstances, the Assistant Director found as follows:

> "The evidence discussed by me further establishes, beyond any doubt, that the amount of Rs.5,90,000/- seized from Sri.Faizal is involved in the contravention committed by him and was meant for payment to certain persons as per the chit seized from his possession. Till date, Sri.Faizal has not claimed that the money belonged to him in any other manner. He made claims that the money belonged to somebody else who has not so far claimed the amount from the Enforcement Directorate. Not even a single affidavit was filed by Sri.O.T.Sulaiman to whom the amount was said to be given by Sri.Mohammed from whom the amount was collected. I further find that the money was intended for some third persons under instructions of Yousuf, residing outside India. In these circumstances, I feel that it is a fit case to invoke the provisions of S.63 of FERA, 73. Therefore, in addition to the penalty imposed by me, I order that the seized amount of Rs.5,90,000/- (Rupees Five lakhs ninety thousand only) be confiscated to Central Govt. under Section 63 of FERA, 73."

The Appellate court after detailed consideration confirmed the same. It is also noticed that Zakeer who was with him did not deny the statement and apart form the statement documents seized from him and non explanation of the source of money

clearly shows the guilt of the appellant and we fully concur with the concurrent findings of the authorities below. It is submitted that out of poverty the appellant has done such transactions. Only 20% of the confiscated amount was imposed as the penalty. There is no ground for showing any leniency to such person who are dealing with such transactions destroying the country's economy as such. However, on the facts and circumstances of the case, appellant is allowed to pay the penalty of Rs.1,20,000/- in three equal monthly instalments. First instalment shall be paid on or before 30.6.2007. Next two instlaments should be paid on or before 30.7.2007 and 30.8.2007. If any default is made in the above payment, respondent will be free to recover the same. With the above observations this M.F.A. is disposed of.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO. OF 2006 ()

J U D G M E N T

8th June, 2007